

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

KENNETH ALLEN RUSSELL,

Petitioner,

File No. 2:10-CV-192

v.

HON. ROBERT HOLMES BELL

LINDA TRIBLEY,

Respondent.

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**ORDER OF DISMISSAL**

On October 18, 2010, Magistrate Judge Timothy P. Greeley issued a Report and Recommendation (“R&R”) recommending that Petitioner’s § 2254 petition for writ of habeas corpus be dismissed pursuant to Rule 4 of the Rules Governing § 2254 Cases because it is barred by the one-year statute of limitations. (Dkt. No. 13.) Petitioner did not object to the R&R. Instead, he has filed a notice that he is withdrawing his petition, and a request that the petition be dismissed without prejudice. (Dkt. No. 14.)

A party may dismiss an action without a court order by filing a notice of dismissal before the opposing party serves and answer or a motion for summary judgment. Fed. R. Civ. P. 41(a)(1)(A). Such a dismissal may be without prejudice unless the plaintiff has previously dismissed an action on the same claim. Fed. R. Civ. P. 41(a)(1)(B). It does not appear that Petitioner has previously dismissed a § 2254 petition. Accordingly,

**IT IS HEREBY ORDERED** that Petitioner's notice of dismissal and request for dismissal without prejudice (Dkt. No. 14) is **GRANTED**.

**IT IS FURTHER ORDERED** that Petitioner's § 2254 petition is **DISMISSED WITHOUT PREJUDICE**.

**IT IS FURTHER ORDERED** that the R&R (Dkt. No. 13) is **REJECTED AS MOOT**.

Dated: December 9, 2010

/s/ Robert Holmes Bell  
ROBERT HOLMES BELL  
UNITED STATES DISTRICT JUDGE